THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11167 OF 2006

DATED: 22-3-2007

Between :

M/s. Hard Granite Industries, Chittoor,
A Proprietory Concern, rep. by its Proprietor,
Sri C. Surendra Reddy .. Petitioner

And

The Government of A.P., rep. by its Principal
Secretary to Government, Environment, Forest,
Science & Technology, (For-I) Department,
Hyderabad and 4 others. .. Respondents

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ORDER :

The writ petitioner was granted a mining lease for quarrying Black granite over an extent of 2 hectares in Sy.No.228 of Kottalam Village, Yadamarri Mandal, Chittoor District vide proceedings dated 4-2-1997. Since the leased area forms part of Reserved Forest, in terms of the orders of this Court in W.P.No.9876 of 1998, dated 10-4-1998, the petitioner made an application on 2-5-1998 for clearance under Section 2 of the Forest (Conservation) Act, 1980 (for short, 'the Act'). As per the Statutory Rules in force at the relevant point of time, the said application was made to the Director of Mines & Geology and the same was forwarded to the Principal Chief Conservator of Forests for necessary action. While the said application was under process, the mining lease in favour of the petitioner was cancelled along with other similarly placed lessees, vide proceedings of the Director of Mines & Geology, dated 19-3-2000 on the ground that they failed to obtain the required clearance under the Act. Challenging the same, the petitioner preferred a Revision Petition before the 1st respondent, but the same was dismissed by order dated 16-8-2001. Against the said order, the petitioner preferred W.P.No.14169 of 2002 which was dismissed by this Court and even W.A.No.1489 of 2002 was dismissed by a Division Bench of this Court. In the meanwhile, the file relating to the petitioner's application dated 2-5-1998 for clearance under the Act was also closed by the Divisional Forest Officer, Chittoor West Division vide proceedings dated 15-11-2000 on the

ground that the petitioner's quarry lease was cancelled.

While so, in exercise of the powers conferred by Section 4 of the Act, new Rules were made under GSR.23 (E), dated 10-1-2003 in supersession of the earlier Rules. As per the new Rules which came into force w.e.f. 10-1-2003, the Principal Chief Conservator of Forests is the Nodal Officer authorised by the State Government. The User Agency, who wants to use any forest land for non-forest purpose has to make its proposal in appropriate form, appended to the Rules to the concerned Nodal Officer. In view of the new Rules, the petitioner made a fresh application dated 12-10-2003 in the format prescribed under the new Rules requesting the Principal Chief Conservator of Forests, Hyderabad to grant clearance under the Act. The said application was registered on 13-10-2003 in the Office of the Principal Chief Conservator of Forests at Sl.No.31. By proceedings dated 8-10-2004, the Conservator of Forests recommended the case of the petitioner to the Principal Chief Conservator of Forests for clearance observing that its application shall be treated as the first application.

However, the 1st respondent – Government of Andhra Pradesh by proceedings dated 25-10-2004 directed the Principal Chief Conservator of Forests to process the application of the 5th respondent herein and furnish the required proposals to the Government. Pursuant thereto, the Principal Chief Conservator of Forests by letter dated 6-11-2004 informed the petitioner that its application dated 12-10-2003 cannot be processed.

Aggrieved by the said action, the petitioner filed W.P.No.21489 of 2004 contending inter alia that the application of the 5th respondent which was made on 27-10-2003 and registered at Sl.No.42 in the Office of the Principal Chief Conservator of Forests cannot be given priority.

This Court having heard both the parties while setting aside the orders dated 25-10-2004 and 6-11-2004 disposed of the said writ petition by order dated 1-2-2006 with directions as under :

"Accordingly, the impugned order of rejection dated 25-10-2004 as well as the consequential order dated 6-11-2004 are set aside the 1st respondent is directed to issue notice to both the petitioner and the 5th respondent and after hearing them, pass appropriate orders afresh in accordance with law. Such exercise shall be completed as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order. Till such time, the respondents 1 to 4 are directed not to process the applications of both the petitioner and the 5th respondent."

Pursuant thereto, the 1st respondent passed the impugned order dated 4-5-2006 holding that the application of the 5th respondent alone should be processed.

Hence, this writ petition seeking a Writ of Certiorari by calling for the records of the 1st respondent dated 4-5-2006 and to quash the same being arbitrary, illegal and in total disregard of the observations made by this Court in W.P.No.21489 of 2004 dated 1-2-2006 apart from being contrary to the provisions of the Forest (Conservation) Act, 1980 and the Rules made thereunder.

I have heard the learned Counsel for both the parties in detail.

As could be seen from the material on record, it is not in dispute that the quarry lease granted to the petitioner under the Mines & Minerals (Development & Regulation) Act, 1957 (Act 67 of 1957) and the Rules made thereunder was cancelled by the competent authority on 19-3-2000 itself and the said order has become final. Pursuant thereto, the application of the petitioner dated 2-5-1998 seeking clearance under Section 2 of the Forest (Conservation) Act, 1980 was closed by the Divisional Forest Officer, Chittoor West Division vide proceedings dated 15-11-2000. The petitioner never challenged the said order, but subsequently made a fresh application dated 12-10-2003 in the format prescribed under the new set of rules which came

into force w.e.f. 10-1-2003. The said application was registered in the office of the Principal Chief Conservator of Forests (Nodal Officer) at Sl.No.31.

It is also not in dispute that the application of the 5th respondent dated 27-10-2003 made under the new set of rules was registered at Sl.No.42 by the Nodal Officer.

Since the petitioner's application dated 12-10-2003 was earlier in point of time than the application of the 5th respondent dated 27-10-2003, the petitioner contends that his application should be given priority.

The said claim was not accepted by the 1st respondent under the impugned order on the ground that the application of the 5th respondent dated 1-7-2002 made under the old Rules cannot be ignored as clarified by the Government of India, Ministry of Environment & Forests by Memo dated 15-12-2003.

As per the Memo dated 15-12-2003 the Government of India, Ministry of Environment & Forests while clarifying that the new format prescribed in the Rules dated 10-1-2003 is applicable to those proposals which have been submitted by the User Agency to the respective State / U.T. Governments on 10-1-2003 and thereafter, directed the Principal Chief Conservator of Forest of all the States / U.T. Governments and Nodal Officers to process the proposals in the pipeline before 10-1-2003.

The petitioner had contended before the 1st respondent that since it had made the application for clearance under the Act on 2-5-1998 which was not rejected but only closed by the Divisional Forest Officer, there is absolutely no justifiable reason in not extending the benefit of the Memo dated 15-12-2003 to it. It was contended that its fresh application dated 12-10-2003 should be treated as continuation of the application initially made on 2-5-1998 and consequently the same should be given priority over and above the application of the

5th respondent.

As noted above, the quarry licence granted in favour of the petitioner dated 4-2-1997 is no longer subsisting. Admittedly the application dated 2-5-1998 was made by the petitioner seeking clearance under Section 2 of the Forest (Conservation) Act, 1980 for the purpose of the said quarry lease dated 4-2-1997. Consequent to the cancellation of quarry lease, the file relating to the petitioner's application dated 2-5-1998 was also closed by the Divisional Forest Officer, Chittoor West Division vide proceedings dated 15-11-2000. Both the above said orders have become final.

Nothing has been placed before this Court to show that the petitioner was subsequently granted any fresh quarry lease. However, he made a fresh application dated 12-10-2003 seeking clearance under the Forest (Conservation) Act, 1980 in the revised format prescribed under the new Rules. In the circumstances, the action of the respondents in declining to treat the said application dated 12-10-2003 as continuation of the application dated 2-5-1998 cannot be held to be arbitrary or erroneous. Once the mining lease is cancelled and does not subsist, the application, if any, pending under Section 2 of the Forest (Conservation) Act, 1980 would automatically be rendered superfluous. On the other hand, since the quarry lease in favour of the 5th respondent is subsisting, the 1st respondent had rightly concluded that the application dated 27-10-2003 is the continuation of its earlier application dated 1-7-2002 and therefore the said application alone should be processed.

The observations made by this Court while disposing of W.P.No.21489 of 2004 cannot be taken as conclusive since this Court never recorded any finding on merits. As a matter of fact, one of the contentions raised before this Court in W.P.No.21489 of 2004 was that the orders impugned therein were passed without notice to the petitioner. While accepting the said submission, this Court set aside the orders impugned and directed the 1st respondent to hear both the

parties and pass appropriate orders afresh. Hence, the contention of the petitioner that the impugned order is bad being contrary to the observations made by this Court cannot be accepted.

It is not the case of the petitioner that the impugned order was passed without authority nor that the order was in violation of the principles of natural justice. On the basis of the material placed before this Court, absolutely no case is made out to show that the impugned order suffers from any patent error of fact or law. Hence, I do not find any justifiable reason to issue a Writ of Certiorari as prayed for.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 22–3-2007

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